BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	
Table of Allotments,	)	MB Docket No. 05-162
FM Broadcast Stations	)	RM-11227
(Enfield, New Hampshire; Hartford and White River	)	
Junction, Vermont; and Keeseville and Morrisonville,	)	
New York)	)	

To: Office of the Secretary
Attn: Assistant Chief, Audio Division, Media Bureau

RESPONSE

Radio Broadcasting Services, Inc. ("RBS"), by its attorneys, hereby responds to the Opposition to Motion to Dismiss ("Opposition") filed by Nassau Broadcasting III, L.L.C. ("Nassau") and the Motion to Strike or Leave to File Comments ("Motion to Strike") filed by Great Northern Radio, LLC ("Great Northern"), in connection with the above-referenced rulemaking proceeding.[1] Nassau and Great Northern filed their respective pleadings in response to the Motion to Dismiss Petition for Rule Making ("Motion to Dismiss") submitted by Hall Communications, Inc. ("Hall"), in which Hall demonstrated that Commission precedent

[1] *See Enfield, New Hampshire; Hartford and White River Junction, Vermont; and Keeseville and Morrisonville, New York*, 20 FCC Rcd 7587 (MB 2005) ("NPRM"). The NPRM sets forth Nassau's proposal to amend the FM Table of Allotments as follows: (1) to reallot Channel 282C3 from Hartford, Vermont to Keeseville, New York and to modify the license of Station WWOD(FM), Hartford, Vermont accordingly; (2) to reallot Channel 237A from White River Junction, Vermont to Hartford, Vermont and to modify the license of Station WXLF(FM), White River Junction, Vermont accordingly; (3) to reallot vacant Channel 231A from Keeseville, New York to Morrisonville, New York; and (4) to allot Channel 282A to Enfield, New Hampshire.

concerning vacant allotments and expressions of interest therein requires dismissal of this second Keeseville, New York allotment proposal. In their pleadings, both Nassau and Great Northern make misleading claims with regard to this precedent, to which RBS now wishes to respond. In support thereof, RBS states as follows.

In its Motion to Dismiss Petition for Rule Making, Hall cites *Martin, Tiptonville and Trenton, Tennessee*, 13 FCC Rcd 17767 (Allocations Branch 1998) ("*Martin I*") as one example of a Commission policy against deleting a vacant channel in which interest has been expressed, in the absence of any compelling public interest reasons to the contrary. *See* Motion to Dismiss at 3. In *Martin I*, the Commission rejected a proposal to downgrade a vacant FM allotment in Tiptonville, Tennessee, from a Class C3 to a Class A facility, because two parties had expressed interest in the Class C3 allotment. As the Commission reasoned in that case: "it is Commission policy not to delete a channel in which an interest has been expressed." *Martin I* at ¶ 6 (citing *Calhoun City, Mississippi*, 11 FCC Rcd 7660 (1996); *Driscoll, et al., Texas*, 10 FCC Rcd 6828 (1995); *Woodville, Mississippi, et al.*, 9 FCC Rcd 2769 (1994)).

In an attempt to avoid application of this clear and definitive policy to Nassau's current Keeseville proposal, Nassau, in its Opposition, and Great Northern, in its Motion to Strike, both cite *Bethel Springs, Martin, Tiptonville, Trenton and South Fulton, Tennessee*, 17 FCC Rcd 14472 (MB 2002) ("*Martin II*"), a case involving the same Class C3 Tiptonville allotment and some of the same parties as *Martin I*. In *Martin II*, the Commission granted a proposal by the same petitioner as in *Martin I* to downgrade the Tiptonville allotment from a Class C3 to a Class A facility. *See Martin II* at ¶ 15. According to Nassau and Great Northern, the outcome of *Martin II* establishes that, the Commission's holding in *Martin I* notwithstanding, an expression

of interest in an allotment is no bar to the modification or deletion of that allotment. *See* Opposition at 3; Motion to Strike at 5-6. Both Nassau and Great Northern misread *Martin II.*

Before accepting the proposal to downgrade the Tiptonville allotment in *Martin II*, the Commission analyzed the proposal to ensure its conformance to Commission policy. Of key importance in this analysis was the fact that no formal expressions of interest by any party had been filed with regard to the vacant Class C3 channel at Tiptonville. *See Martin II* at ¶ 10. In other words, an important and decisive distinction exists between *Martin I* and *Martin II* in the form of the absence in *Martin II* of expressions of interest in the Class C3 Tiptonville allotment, which had properly served to block the petitioner's proposal in *Martin I.*

Nassau's and Great Northern's claims that *Martin II* decision shows that expressions of interest do not stand in the way of modification or deletion of an allotment are thus clearly based more on their personal interests than on a close reading of the case. While the Commission did state in an aside that, even if it had considered another party's request that it take official notice of *Martin I* as the functional equivalent of an expression of interest, it would have granted the proposal anyway, the aside did not play a part in the decision reached in the case. *Martin II* at ¶ 15. This comment, which Nassau and Great Northern now seize upon as the Commission's final word, clearly amounts to little more than dicta in a case that otherwise upholds the *Martin I* expression of interest principle by acknowledging and satisfying it. Nassau's and Great Northern's claims regarding the demise of that principle are thus greatly exaggerated and *Martin II* cannot be relied on to support the result they seek.

As Hall and RBS have previously demonstrated, any party seeking the deletion of an allotment in which there is already an expression of interest must establish that extraordinary

circumstances warrant such a deletion. *See Montrose and Scranton, Pennsylvania*, 5 FCC Rcd 6305 (1995); *Billings and Lewistown, Montana*, 11 FCC Rcd 8560 (1996). No circumstances, let alone extraordinary circumstances, have been by presented here by either Nassau or Great Northern, only their dissatisfaction with the Commission's allotment of Channel 231A to Keeseville despite Hall's legitimate expression of interest therein. That is simply insufficient to warrant the deletion of the allotment before parties, including Hall, have a chance to seek an authorization from the Commission to construct and operate a new facility making use of the allotment.

WHEREFORE, Radio Broadcasting Services, Inc. respectfully requests that the Commission deny the Petition for Rule Making submitted by Nassau Broadcasting III, L.L.C.

Respectfully submitted,

RADIO BROADCASTING SERVICES, INC.

By:_____

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CERTIFICATE OF SERVICE

I, Barry A. Friedman, do hereby certify that I have, on this 29th day of July, 2005, served a copy of the foregoing "Comments" on the following parties, by first-class mail, postage prepaid:

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